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NOV 24 1993

FCC - MAIL ROOM

Office of the Secretary
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

Re: PP DOCKET NO. 93-253
SECTION 309(j) RULE MAKING

Dear Sir,

We are a small business with a sincere interest in the concept of Interactive Video and being able to implement our ideas, once licensed to do so. We are not speculators and we consider IVDS to be a long term business opportunity. After investing considerable amounts of money in preparation for a Lottery, it appears that all of our hopes and efforts have been in vain. A decision has been made to subject IVDS to Auction Rules. I ask on be-half of our Company and for Small Business that you reconsider your decision. The following comments are meant to be constructive and to reflect a culmination of talks with other Small Business people about recent changes in the law made by Congress.

OPPORTUNITY. "When our nation works at its best, every citizen shares in the belief that to be an American is to be blessed with the opportunity to fulfill personal potential - no matter how humble one's beginnings and regardless of race, gender, religion or class."
(SOURCE PRESIDENT BILL CLINTON-PARADE MAGAZINE, PG.#5, JULY 4, 1993.)

LOTTERY VS AUCTION. If the express purpose of having an Auction is to enrich the U.S. Treasury, there is hardly any debate that an Auction will accomplish that purpose. However, let's be candid and not clutter up that fact with how you're also going to provide an equal opportunity for Small Business and others. This is wishful thinking. Those who pushed for passage of 309(j) are some of the BIGS OF AMERICAN BUSINESS: AT&T, GTE, REGIONAL BELLS, CABLE COMPANIES & others. They and their benefactors in Congress didn't pass legislation with the idea of sharing any part of the spectrum. To play in the Auction game, deep pockets are the only criteria.

This fact poses some problems which Congress conveniently created when passing the legislation. There is no way to police those who claim to be small players. The **BIGS** have teams of lawyers who obtain other lawyers to finance and create companies, which create other companies, that are held by holding companies and so on and so forth. I doubt if you have the people or finances to deal with this. The concerns in the dissent of Commissioner Barrett are well founded.

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A Lottery, on the other hand, provides an equal opportunity for all who wish to participate. This explains why the people, for whom 309(j) was unfairly legislated to benefit, don't participate. It is interesting to note that there were no public hearings held. On page #13 of the Notice of Proposed Rule Making the lottery system is severely critized because 70% of all cellular licenses and 85% of non-wireline licenses had been transferred at least one time. The thrust of the complaint is that those licenses were bought at market prices. In other words, the Government didn't receive the money.

What this also says is that 30% of all cellular licenses and 15% of non-wireline licenses are still in the hands of, who I would assume to be, Small Business and individuals. I bring this to your attention for two reasons. First, I don't find any numbers which tell me FCC intentions regarding the percentage of Licenses to be allocated to Small Business in the Auctions. I presume the percentage would be far smaller than the 30% and 15% currently held in cellular. After all, the object is to create money for the treasury. Secondly, I would like to point out that apparantly there were no rules prohibiting these sales. Reasonable rules regarding sales should be enacted. The performance requirements already enacted seem to work well. We do not endorse trafficking of licenses, a practice which is clearly remedial. The Lottery concept isn't responsible for the actions of a few bad apples.

UNJUST ENRICHMENT FROM LOTTERIES & AUCTIONS. Again on Page #13 of the Notice, the Lottery process is deemed responsible for the sale of a license in the amount of \$62.3 Million. Certainly, this transaction was as abusive as it was legal. There were obviously no rules in place to prohibit this transaction. The solution, again, is to enact reasonable rules instead of blaming the lottery process. As you know, AT&T and MCCAWE Cellular Communications, Inc., are merging in an all-stock transaction valued at \$12.6 Billion Dollars. Is this transaction an example of **UNJUST ENRICHMENT?** (SOURCE AT&T THIRD QUARTER REPORT) "The FCC will let them bid for licenses for pocket phones and computers. This amounts to a big break for AT&T." (SOURCE KIPLINGER 8/20/93 ISSUE.) Isn't it a fact that "The Bell Companies were each handed 25 megahertz blocks of spectrum nearly 15 years ago when the FCC allotted a smaller but still valuable portion of bandwidth that allowed the growth of the now thriving cellular industry." (SOURCE SAN FRANCISCO EXAMINER 9/25/93) Was that allocation of spectrum an example of **UNJUST ENRICHMENT?**

As was mentioned before, the Congress legislated 309(j) without public hearings and as you are aware the American people made it clear in the last election that the inequitable distribution of wealth in America is unacceptable. The people feel that their Congressman and Senators are being unjustly enriched in that they earn more money than 98% of the people. It seems to small business that the issue of unjust enrichment only surfaces when someone small makes a few dollars. The **BIGS** thrive at the public trough, generate huge profits and are not being unjustly enriched. For example, at least \$2 Billion of money from the treasury is going to assist with fiber optics for the construction of the "information highway."

The people receiving this money will be able to purchase IVDS LICENSES. We're ready to compete for an IVDS License in a lottery where we have a chance. If we don't win a license, we'll have no complaints. "The Government is quietly putting money behind favorite industries, choosing winners and losers rather than letting the marketplace decide." (SOURCE KIPLINGER 10/22/93) The concerns of Commissioner Barrett are again well founded.

IVDS/PAY OR FREE. A determination apparently has been made that Broadcast Television is the yardstick by which to measure IVDS as a free or pay service. Broadcast Television is not free. Therefore, a yardstick has been developed by which to guarantee that IVDS will be AUCTIONED. There isn't a person in America, with a T.V. or not, that doesn't pay for the advertising on Broadcast T.V.. Free T.V. is PUBLIC TELEVISION, without advertising, where the viewer may elect to become a member or not. Examples are KQED Channel 9, San Francisco, Ca. and KCSM Channel 60, San Mateo, Ca.. These stations became so popular with the public because of the quality of their programming. This success means that the quality of Broadcast T.V. is lacking.

There is concern among the public and some Government officials that what comes into our homes is controlled by far too few people. An Auction of IVDS will guarantee that to be a fact. That IVDS is coming into the home is the one major factor that separates it from the other services being considered for Auction. We ask you not to submit to **Political Pressure** for the benefit of the **BIGS WHO ARE ALSO PROVIDING IVDS BY CABLE.** They seek to purchase total control of IVDS regardless of the method of delivery, frequency or cable.

SUSPICIONS OF LOTTERY APPLICANTS. Small Business Lottery applicants believe that a deal was cut behind the scenes between Congress and the **BIGS** before 309(j) was ever enacted. There are four basic reasons for this conclusion. First, after the decision was rendered to reduce the \$1,400.00 application fee to \$35.00, FCC never opened up other windows for the remainder of the applications. There were several months between the signing of the new legislation and the time of the \$35.00 decision. Second, IVDS was not grandfathered in for the purpose of the Lottery. The basis was that the applications hadn't been received. Third, the pay or free criteria with Broadcast TV adopted as the yardstick for determining LOTTERY or AUCTION. We all know that nothing is totally free and that includes Broadcast TV. Fourth, as business people we understand Congress controls the purse strings and we know they dictate the jobs it wants Agencies to do. Essentially, the Agencies have 535 bosses.

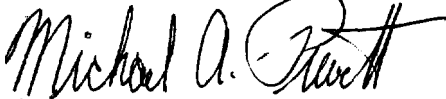
Our small company saw IVDS as the business for us and we also concluded that we were ideal for IVDS. We have no cable company. We don't have folders full of licenses to choose from while we debate which one to build out next. We aren't laying fiber optic cable hooking up 15,000 customers a week like Pacific Bell this Spring or US West at 500,000 homes a year all by cable. Are you really going to auction this service off to those who only want it because its competition for their cable or are you going to Lottery IVDS to those of us who consider IVDS BOTH A JEWEL IN THE ROUGH AND A CHALLENGE?

4.

We have made no suggestions for the best ways to implement Auction Rules for IVDS since we don't believe IVDS should be auctioned and because we have decided not to participate in any Auctions. We believe that Congress was motivated by considerations other than the condition of the Treasury which they have put \$4 Trillion plus in the red. Suddenly, we are asked to believe they are fisical conservatives. All we ask you to do is to consider our candid comments which are constructively intended.

Thank you for providing us the opportunity to comment on Auctions for IVDS. We expect to hear from you regarding our comments as we eagerly await your reconsidered decision to LOTTERY IVDS.

Very truly yours,

A handwritten signature in cursive script, reading "Michael A. Prevett". The signature is written in dark ink and is positioned above the printed name.

Michael A. Prevett